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Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111				
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HANSEN, JAMES ORVILLE				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID TODD NAY, AARON ROGER COX,  
DANIEL PAUL KELAHER,  
TIMOTHY ANDREAS MESERTH, and  
BRADLEY MICHAEL LAWRENCE

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Appeal 2008-3692  
Application 10/822,255  
Technology Center 3600

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Decided: November 12, 2008

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Before WILLIAM F. PATE, III, LINDA E. HORNER, and  
KEN B. BARRETT, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

David Todd Nay et al. (Appellants) seek our review under 35 U.S.C.  
§ 134 from a final rejection of claims 1, 6-8, 14 and 22. We have  
jurisdiction under 35 U.S.C. § 6(b) (2002).

We REVERSE.

Appellants' claimed invention pertains to a rack for mounting a computer terminal in a cabinet. The rack slides horizontally out of the cabinet like a drawer and is vertically adjustable to accommodate users of various heights. (*See* Spec. 2, ll. 7-12.) Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer terminal bracket rack mounted in a computer cabinet and configured to fold into a single horizontal plane, comprising:

a first frame movable with respect to the computer cabinet by wheels over rails, the rails fabricated of a lubricious material with a coefficient of sliding friction of less than 0.11, whereby a distal edge of the first frame of the bracket is extendable outwardly from the computer cabinet; and

a second frame composed of two longitudinal frames horizontally separated by two lateral frames, the longitudinal frames and lateral frames forming a horizontally disposed open rectangle with a first lateral frame connecting only to a proximal end of each longitudinal frame, a second lateral frame connecting only to a distal end of each longitudinal frame, and the first and second lateral frames not impinging on an open interior of the rectangle, wherein each longitudinal frame's longitudinal dimension is much greater than the longitudinal frame's latitudinal dimension, pivotally mounted by first friction hinges at a proximal edge to the distal edge of the first frame, the first friction hinges configured for the second frame to rotate about the distal edge of the first frame and comprising first friction brakes that restrain rotation at a desired angle;

a keyboard holder pivotally mounted to the second frame by second friction hinges at a distal edge thereof for angular adjustment of the keyboard holder, the second friction hinges configured for the keyboard holder to rotate about the distal edge of the second frame and comprising second friction brakes that restrain rotation at a desired angle, wherein the height of said keyboard holder is adjustable in a vertical direction;

a keyboard coupled to said keyboard holder;  
a display holder pivotally mounted to the second frame at  
the distal edge thereof for angular adjustment of the display  
holder; and  
a display coupled to said display holder.

The Examiner relies upon the following as evidence of  
unpatentability:

Gill	US 5,388,032	Feb. 7, 1995
Krivec	US 5,549,374	Aug. 27, 1996
Moore	US 6,201,690 B1	Mar. 13, 2001
Ku	US 6,266,236 B1	July 24, 2001

Appellants seek our review of the rejection of claims 1, 6-8, 14 and 22  
under 35 U.S.C. § 103(a) as unpatentable over Moore in view of Gill,  
Krivec, and Ku.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the  
initial burden of establishing a prima facie case of obviousness. *In re*  
*Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Piasecki*, 745  
F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the  
burden of coming forward with evidence or argument shift to the appellants.  
*See Oetiker*, 977 F.2d at 1445; *see also Piasecki*, 745 F.2d at 1472.  
Obviousness is then determined on the basis of the evidence as a whole and  
the relative persuasiveness of the arguments. *Oetiker*, 977 F.2d at 1445.

Each rejected claim requires a second frame which has: a) “a first  
lateral frame connecting only to a proximal end of each longitudinal frame,  
[and] a second lateral frame connecting only to a distal end of each  
longitudinal frame,” and b) “the longitudinal frames and lateral frames  
forming a horizontally disposed open rectangle.” The Examiner found that

these limitations are disclosed in Moore's part 43. (Ans. 3-4, 6.) Appellants disagree. Appellants contend that "the lateral members disclosed in Moore are each connected to both the proximal end and the distal end of each longitudinal frame." (App. Br. 13.) Appellants also contend that Moore's open rectangle is vertically disposed. (*Id.* at 14.)

We agree with the Appellants that Moore does not teach first and second lateral frames connecting only to the proximal and distal ends, respectively, of the longitudinal frames when the pertinent claim language is given its broadest reasonable interpretation in light of the Specification. The Examiner identifies the upper and lower portions of Moore's part 43 as the two lateral frames, and the side members of part 43 as the longitudinal frames. (Ans. 3-4.) The Examiner incorrectly found that the upper and lower sides of Moore's longitudinal frames are the ends of those longitudinal frames (Ans. 6, 7). Appellants' Specification indicates that the ends of the longitudinal frames are the extreme parts lengthwise, not the upper and lower sides. (*See* Spec. 6, ll. 14-16; Figs. 1, 3.) The upper portion of Moore's part 43 appears to be a solid panel connected to the longitudinal frames along almost the entire length of each longitudinal frame. (*See* Moore, Figs. 4, 9.) The lower portion of Moore's part 43 appears to be partially open but is also connected along almost the entire length of each longitudinal frame. (*See id.*) Therefore, we conclude that Moore's lateral frames (the upper and lower portions) do not connect only to the proximal and distal ends of the longitudinal frames as required by the claims.

We also agree with Appellants that Moore does not disclose a horizontally disposed open rectangle. The figures of Appellants'

Specification confirm that the claimed “horizontally disposed open rectangle” is a rectangular opening oriented in the horizontal plane when the rack is in the stowed configuration. (*See Spec.*, Figs. 3, 4, 5A and 5B (depicting a computer display unit that folds into the horizontal opening in the second frame).) The rectangular opening of Moore’s part 43 is vertically disposed when the rack is in the stowed position. (*See Moore*, Figs. 9, 12.)

The Examiner relies on Gill, Krivec, and Ku for the disclosures of a wheel/rail arrangement, a lubricious material, and friction hinges, respectively. (Ans. 4-5, 8.) The Examiner has not identified any teachings in those references concerning the second frame component connections or the disposition of the frame opening so as to cure the deficiencies of Moore. (*See id.*) Thus, we cannot sustain the rejection of claims 1, 6-8, 14 and 22.

The decision of the Examiner is reversed.

**REVERSED**

hh

Kunzler & McKenzie  
8 EAST BROADWAY  
SUITE 600  
SALT LAKE CITY, UT 84111